DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
APR 27 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
Inter-Carrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68

REPLY COMMENTS OF ICG COMMUNICATIONS, INC.

Cindy Z. Schonhaut
Executive Vice President of Government
and Corporate Affairs
ICG Communications, Inc.
161 Inverness Drive W., 6th Floor
Englewood, CO 80112
(303) 414-5464

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, DC 20037-1526
(202) 828-2226

Attorneys for ICG Communications, Inc.

April 27, 1999

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
Inter-Carrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68

REPLY COMMENTS OF ICG COMMUNICATIONS, INC.

ICG Communications, Inc. hereby replies to comments filed in response to the Commission's Notice of Proposed Rulemaking in this proceeding, FCC 99-38, released February 26, 1999.

I. CLEC COMMENTERS BROADLY AGREE ON KEY ISSUES

The comments reflect broad agreement among competitive local exchange carriers ("CLECs") that the following general principles should govern the Commission's treatment of inter-carrier compensation for internet service provider ("ISP") traffic:

1. Because local exchange carriers ("LECs") terminating ISP-bound traffic to an ISP incur costs and enable the originating LEC to avoid costs that the originating LEC would otherwise incur, terminating LECs are entitled to be compensated by originating LECs for the costs that the terminating LEC incurs to terminate such traffic. See, e.g., Comptel at 14; AT&T at 1; CT Cube and Leaco at 2; ICG at 1; MCI at 8-11; Telecommunications Resellers Association ("TRA") at 7-8.

2. The compensation rate should not be left solely to "market-based" negotiations, but should be governed by federal rules. Because an effectively competitive market does not yet exist, and, for terminating traffic, may never exist,[1] federal rules are at least as necessary here as in other aspects of CLEC-ILEC interconnection. See, e.g., Association for Local Telecommunications Services ("ALTS") at 9-10; Comptel at 10-13; TRA at 7-8; CTSI at 11-13; AT&T at 4-6; CT Cube and Leaco at 1-2; GST at 11-14; ICG at 2-3; KMC at 6; MCI at 5-8; RCN at 5-6.

3. Rate symmetry (i.e., the same rate for an ILEC and interconnecting CLECs) should apply to ISP-bound traffic, just as it applies to reciprocal compensation for voice traffic. See, e.g., Comptel at 8, 14-15; AT&T at 9; Cablevision Lightpath at 10; CTSI at 15-16; Focal at 12-13; GST at 16-17; ICG at 10; KMC at 7; MCI at 15-16; RCN at 9-10.

4. The compensation rate should be determined on the same basis as the rate for termination of local voice traffic. Even though much of ISP-bound traffic may be jurisdictionally interstate, the traffic is handled by the originating LEC identically to local traffic, incurs costs in the same manner as local traffic, and is priced to end users as if it were local. Therefore, compensation for ISP-bound traffic should be handled in the same manner as for local traffic. See, e.g., Comptel at 2-4; ALTS at 12-13; AT&T at 8-17; Cablevision Lightpath at 7-9; CTSI at 5-6; Focal at 14-17; ICG at 8-10; Intermedia at 3-4; KMC at 6; MCI at 16-17; RCN at 2-3; Sprint at 3-4; Time Warner at 3-9.

5. The compensation rates that apply to ISP traffic – where ILECs are currently net pay*ors* of compensation – must follow a similar structure and methodology to the rates that apply in contexts where ILECs are

[1] See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket Nos. 96-98, 95-185, 11 FCC Rcd 15499, ¶ 1058 (1996) ("Local Interconnection Order"), aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8^{th} Cir. 1997), aff'd in part and vacated in part sub nom. Iowa Utils. Bd. v. FCC, 120 F3d 753 (8^{th} Cir. 1997), aff'd in part and rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 721 (1999); Order on Reconsideration, 11 FCC Rcd 13042 (1996); Second Order on Reconsideration, 11 FCC Rcd 19738 (1996); Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460 (1997); further recon. pending.

net pay*ees*. This approach will provide ILECs with an incentive to do the Commission's work for it by ensuring that their cost studies accurately reflect economic costs. Local Interconnection Order, ¶ 1058. See, e.g., Comptel at 2-8; AT&T at 15; Cablevision Lightpath at 10; ICG at 9-10; MCI at 19; RCN at 6-7; Sprint at 4-5.

6. The compensation rate should be a per-minute rate, as it is in other analogous situations. If the Commission is going to experiment with alternative, allegedly more "efficient" cost recovery methods, it should not begin by applying a special rate structure solely to situations where ILECs are in the unique position of being net pay*ors*. See, e.g., ALTS at 18-19; Comptel at 4-5; AT&T at 16; Focal at 14; GST at 17-18; ICG at 10-11; KMC at 7-8; RCN at 3.

7. The compensation rate should be determined based on forward-looking TELRIC cost studies. Applying identical TELRIC-based rates for ISP and voice traffic will help ensure nondiscrimination and accuracy of cost studies and will simplify administration of inter-carrier compensation. See, e.g., ALTS at 10-12, 14-18; Comptel at 5-8; AT&T at 9; Cablevision Lightpath at 9-10; CTSI at 14; Focal at 9-11; GST at 15-17; ICG at 11-12; Intermedia at 3-4; MCI at 11-12; RCN at 8.

While CLECs are largely in agreement on these general principles, there are some differences in emphasis and approach. ALTS emphasizes state implementation of compensation for ISP-bound traffic, subject to the federal rules governing reciprocal compensation for local traffic; Comptel urges a stronger federal role. For example, as an additional safeguard for competition, Comptel and a number of CLECs -- including ICG – urge the FCC to require that the ISP compensation rate for any state must not be lower than the proxy rate established in the Local Interconnection Order. See, e.g., Comptel at 16; ICG at 12-13; MCI at 16-18. Not only will this ensure that Principles 1 and 5 above are followed, but it will also encourage net payors of compensation to offer inexpensive broadband access to their customers to avoid having to continue to pay termination charges for dial-up traffic. ICG at 12-13.[2]

Comptel and others also propose that Section 208 complaint processes, including accelerated docket procedures, be available to enforce LECs' compensation obligations. Comptel at 17. ICG agrees that this is an essential safeguard.

ICG strongly agrees with Comptel on the need for a strong federal role in ensuring fair compensation for termination of ISP-bound traffic. Indeed, ICG goes further than many of the commenting parties in contending that the FCC, rather than the states, should establish the compensation rates for ISP-bound traffic and should do so without delay – i.e., without waiting for the results of inter-carrier negotiations. In prescribing rates, the FCC should begin with the presumption that state-approved TELRIC studies provide an appropriate basis for compensation rates. ICG at 11-14. See also CT Cube and Leaco at 2-3; Sprint at 5-6.

ICG's proposal and other CLEC proposals might well produce similar substantive results over time. In ICG's view, however, ICG's proposal has the advantage of speeding up the process to ensure certainty at a relatively early stage as to the prospectively applicable rates for ISP traffic. As noted above, because the market for local service is not yet effectively competitive, ILEC/CLEC negotiations are unlikely to produce a "market" rate. Thus, under a state-implemented negotiation/arbitration approach – even though subject

---

2 Another interesting alternative, suggested by Global NAPS, would be to use terminating switched access rates as a benchmark for the inter-carrier compensation rate for ISP traffic. Use of this rate would provide an incentive for ILECs to submit accurate cost studies because the rate for ISP inter-carrier compensation, where the ILECs are currently net *payors*, would be set no lower than the rate for terminating access, where the ILEC is a *payee*.

to strong federal rules as advocated by Comptel – in all likelihood the rate applicable to ISP-bound traffic would not be known with certainty until the conclusion of the negotiation and/or arbitration period. As a result, there would be a relatively long period of uncertainty regarding the rate prospectively applicable to ISP compensation.

Under ICG's approach, the rate would be known as soon as the FCC completes its prescription proceeding. Indeed, if the Commission adopts ICG's proposal to make the existing state approved-rates presumptively applicable on a prospective basis to ISP-bound traffic, the presumptive rate would be known as soon as the FCC issues its report and order in this rulemaking. Therefore, while Comptel's approach appears workable, and is likely to produce similar substantive results, federally prescribed rates as advocated by ICG would provide greater certainty and a more efficient ratemaking process. See also Sprint at 5-6.

II. ILEC "MEET-POINT BILLING" AND NON-COMPENSATION PROPOSALS ARE WITHOUT MERIT

A. Inter-Carrier Compensation Should Follow the End User Pricing Model That Is Applicable to ISP Calls

The ILEC commenting parties generally argue that, because the FCC has concluded that ISP traffic is largely interstate in nature, it follows that compensation for such traffic must be based on the dominant regulatory model applicable to interstate LEC services, i.e., access charges. Accordingly, some of the ILECs urge the Commission to adopt a "meet-point billing" model based on access charges – which, as framed by the ILECs, means that the *originating* carrier is entitled to be compensated by the *terminating* carrier, instead of the other way around. BellSouth at 7-9; SBC Communications, Inc. at 22-23; U S West at

9-12. Other ILECs argue that a "bill-and-keep"[3] model should be applied, in which no inter-carrier compensation is paid. Ameritech at 2; Bell Atlantic at 6. GTE proposes that no inter-carrier compensation should be paid for 18 months, while the Commission takes one more look at the application of access charges to ISP traffic. GTE at 18-24.

These ILEC proposals are based on the misconception that, because some of the traffic is jurisdictionally interstate, inter-carrier relationships necessarily must be structured in the same way as access charges. The ILEC proposals might be more appealing if ISP traffic were in fact currently subject to interstate switched access charges and treated in other respects like an interstate long distance voice call. If that were the case, then there might be some logic to the argument that inter-carrier compensation should follow the model of access charges for interstate long distance calls. However, as the Commission recently reaffirmed, switched access charges do *not* apply to ISP traffic, nor is there reason to believe that they will apply to such traffic in the future.[4]

The model that *does* currently apply, under the Commission's rules, to the pricing and handling of ISP-bound traffic is the local call model. A dial-up call to an ISP typically uses the same local dialing sequence used for voice calls, and the calling party is typically billed by the originating carrier for such calls to ISPs in exactly the same manner as he or she is billed for local voice calls. Thus, where message units or measured usage rates apply,

---

[3] ICG agrees with various parties that "bill and keep" should be allowed *where there is minimal imbalance in traffic between two LECs.*

[4] Thus, the ILECs are arguing in the wrong forum. The Commission has elsewhere decided to maintain the existing pricing structure under which ISPs are treated as end users and are not subject to switched access charges. Access Charge Reform, First Report and Order, 12 FCC Rcd 15982, 16133-34 (1997) ("Access Charge Reform Order"), aff'd Southwestern Bell Tel. Co. v. FCC, 153 F.3d 523, 542 (8th Cir. 1998).

the calling party is billed for each unit or minute of use. The called party, by contrast, is nowhere billed for local usage. Thus, even though the legal jurisdiction of the call may be interstate, the practical and economic reality is that the call is treated in every other respect like a local call. Determinations of inter-carrier compensation should be based on practical and economic realities, not on legalistic arguments based on the technical jurisdiction of a call.

Given that the call is treated as local, it follows that the terminating carrier should be compensated by the originating carrier in the same manner as for any local call. For the Commission to find that, on calls that are treated as local for all practical purposes, the terminating carrier is not entitled to recover the call termination costs from the originating carrier, would completely overturn the established principles of inter-carrier compensation. Under the Section 251(b)(5) compensation scheme, and under the Commission's 15-year-old access charge scheme, the Commission's rules provide that the terminating carrier is entitled to compensation from the carrier that bills the originating end user – whether that billing carrier is a LEC or an IXC.

As noted by ICG and others (see Principle 6 above), it is especially critical for the Commission to observe consistency in the application of inter-carrier compensation models to ISP-bound traffic, because this is the one area where ILECs currently find themselves, as a result of their own ratemaking and business decisions, in the role of net *payors* instead of their usual role of *payees.* The ILECs now seek to undo the consequences of their apparent miscalculations by convincing the Commission to treat compensation under a "meet point billing" model that does not in fact apply. The Commission should stand firm and require the uniform application of the correct local compensation model to ISP-bound traffic, which is uniformly treated as local.

B. RBOC Claims That They Are Unable to Recover Their Costs from Internet Calls Are Unpersuasive

The claims of Ameritech and other ILECs that their alleged difficulty in recovering their costs from internet callers should excuse them from paying inter-carrier compensation are wholly unconvincing. Ameritech contends, for example, that it -- and presumably other ILECs -- are unable to recover the costs of internet usage by callers subscribing to second residential lines. If that were true, then it is unexplained why ILECs have so persistently promoted the sale of such lines. But in fact, there is little reason to credit Ameritech's cost analysis. As just one example, the analysis relies on an average loop cost, taking no account whatsoever of the fact that the incremental cost of installing a second residential line in most locations is extremely low.

Even if the ILECs could show economic losses caused by internet traffic, the logical response to such losses would be to increase end user rates for such traffic so as to cover costs, not to seek a special exemption from the established system of inter-carrier compensation. AT&T at 12; Time Warner at 10-11. As the Commission has stated:

> To the extent that some intrastate rate structures fail to compensate incumbent LECs adequately for providing service to customers with high volumes of incoming calls, incumbent LECs may address their concerns to state regulators.

Access Charge Reform Order, ¶ 376.

In this connection, the Commission must recognize that, while the internet may be stimulating new and unanticipated patterns of usage of the public network, it is the internet itself, not CLECs or their customers, that is responsible for generating such new patterns of usage. Any pressure on rates or network congestion that is caused by internet usage would be generated with or without the presence of CLECs. Indeed, if there were no CLECs, be generated with or without the presence of CLECs. Indeed, if there were no CLECs, ILECs would have to build adequate facilities to terminate ISP-bound traffic. Thus, the presence of CLECs actually reduces the pressure on ILECs. Global NAPS at 3-5. Whatever the necessity to raise rates to end users in order to ensure cost recovery by the originating LEC, there is no justification for depriving terminating LECs of compensation for their costs in accordance with the applicable model of end user pricing. Such compensation is especially necessary because, as a number of parties demonstrate, the terminating LEC is able to relieve the originating LEC of substantial costs associated with terminating traffic to ISPs.

CONCLUSION

The Commission should act quickly to prescribe inter-carrier compensation rates based on existing TELRIC-based reciprocal compensation rates for local traffic.

Dated: April 27, 1999

Respectfully submitted,

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202)828-2226

Attorneys for ICG Communications, Inc.

Cindy Z. Schonhaut
Executive Vice President of Government
And Corporate Affairs
ICG Communications, Inc.
161 Inverness Drive W.
Englewood, CO 80112
(303) 414-5464

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 1999, a copy of the foregoing Reply Comments of ICG Communications, Inc. was delivered by first-class U.S. Mail, postage pre-paid to the following parties:

Federal Communications Commission*
The Portals
445 12th Street, SW
Washington, DC 20554

ITS*
1231 20th Street, N.W.
Washington, DC 20036

Gary Phillips
Counsel for Ameritech
1401 H Street, NW, Suite 1020
Washington, DC 20005

M. Robert Sutherland
Richard M. Sbaratta
BellSouth Corporation
1155 Peachtree Street, N.E., Suite 1700
Atlanta, GA 30309-3610

William T. Lake
John H. Harwood II
Lynn R. Charytan
Jonathan J. Frankel
Wilmer, Cutler & Pickering
2445 M Street, NW
Washington, DC 20037

Robert B. McKenna
Jeffry A. Brueggeman
U S West
1020 19th Street, NW
Washington, DC 20036

Robert F. Aldrich

* By Hand